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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,979	12/01/2003	Jochim Koch	71131	4934
7590 10/04/2004			EXAMINER	
McGLEW AND TUTTLE, P.C.			PATEL, NIHIR B	
SCARBOROUGH STATION			ART UNIT	
SCARBOROUGH, NY 10510-0827			PAPER NUMBER	

3743

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/725,979	Applicant(s) KOCH, JOCHIM	
	Examiner Nihir Patel	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on July 30th, 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,8,22,24,28,30,31 and 34 is/are rejected.
- 7) ☒ Claim(s) 2,7,9,19,21,23,25 and 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>07.29.2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Election/Restrictions***

Applicant's election of species of figure 3 and sub-species of figure 6A (Claims 1-5, 7-9, 13, 14, 17-19, 21-26, 28, 30, 31, and 34) in the reply filed on June 21st, 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 13, 14, and 17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on June 21st, 2004. Claims 13, 14, and 17 are dependent claims of claim 11 that was not elected by the applicant and therefore are withdrawn from consideration. The election is considered proper and made **FINAL**.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the hydrophilic fabric/nonwoven (claims 2 and 23); pretensioned spring (claims 7 and 25); membrane (claim 34) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure

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must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 34 recites the limitation "said" in membrane. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 4, 5, 22, 24, 28, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grabenkort US Patent No. 5,487,380 in view of Bartel et al. US Patent No. 5,722,393. Referring to claims 1, 4, 5, 22, 24, 28, 30 and 31, Grabenkort discloses the applicant's

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invention as claimed with the exception of providing means for generating a gas volume flow of at least 60 liters per minute.

Bartel discloses an exhaled gas-cooling device that does provide means for generating a gas volume flow of at least 60 liters per minute (see column 7 lines 10-20). Therefore it would have been obvious to modify Grabenkort's invention by providing means for generating a gas volume flow of at least 60 liters per minute in order to improve the cooling process.

Referring to claim 3, the applicant claims a gas volume flow of 150 L to 250 L per minute is admitted to the outer surface of the calcium hydroxide absorber by the means for generating a gas volume flow.

Grabenkort discloses a exhaled gas filter and cooler that clearly states that "the coolant fluid is directed through the scrubber at a flow rate sufficient to maintain the temperature of the scrubbing substance, and of the exhaled air passing through the scrubbing substance at which the exothermic reaction would occur. The temperature is maintained low enough to limit the buildup of heat in the scrubber even if an abnormally high concentration of anesthetic and carbon dioxide are present in the exhaled air and even if the system is operated at abnormally low flow rates." In a broad sense the term sufficient describes a gas volume flow of 150 to 250 L per minute as stated in claim 3. Therefore it would have been obvious to modify Grabenkort's invention to provide a gas volume flow of 150 L to 250 L per minute is admitted to the outer surface of the calcium hydroxide absorber by the means for generating a gas volume flow in order to improve the cooling process.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grabenkort US Patent No. 5,487,380 in view of Dowgul et al. US Patent No. 4,350,662. Grabenkort discloses

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the applicant's invention as claimed with the exception of providing an evaporating agent that is water, a solution containing water or a mixture containing water.

Dowgul discloses a carbon dioxide absorbent canister with breathing gas temperature and flow control that does provide an evaporating agent that is water, a solution containing water or a mixture containing water. Therefore it would be obvious to modify Grabenkort's invention by providing an evaporating agent that is water, a solution containing water or a mixture containing water in order to improve the cooling process.

Referring to claim 18, the applicant states that the calcium hydroxide absorber has the form of one or more parallelepipedic containers and of a container with an elliptical base, which are in gas flow connection. After reviewing the applicant's specification the examiner believes that there is no criticality in designing the calcium hydroxide absorber in the form of one or more parallelepipedic containers and of a container with an elliptical base, which are in gas flow connection therefore it is considered a matter of design choice.

Allowable Subject Matter

Claims 2, 7, 9, 19, 21, 23, 25, and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

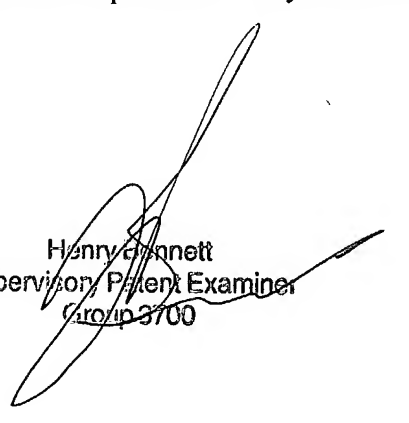
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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (703) 306-3463. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (703) 308-0101.

NP
September 21st, 2004



Henry Bennett
Supervisor, Patent Examiner
Group 3700